IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 16239 of 2006(G)

PETITIONER:

JAISON K. JOHN, AGED 33 YEARS,
S/O. LATE JOHN, KULANGARAMATTATHIL HOUSE,
VELIYANNOOR P.O., KOTTAYAM DISTRICT.

BY ADV. SRI.VIJAI MATHEWS

RESPONDENT:

TESSY THOMAS, AGED 31 YEARS,
D/O. C.K.THOMAS, CHAKKITTAMAKKIL HOUSE,
KURICHTHANAM P.O., UZHAVOOR,
KOTTAYAM DISTRICT.

BY ADV. SMT.K.V.BHADRA KUMARI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE O.P.(DIV) NO.445/02 DATED 4.9.2002.

EXT.P2 TRUE COPY OF THE OBJECTION DATED 24.4.2004

EXT.P3 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 22.4.03.

EXT.P4 TRUE COPY OF THE MEDICAL REPORT DATED 13.7.04.

EXT.P5 TRUE COPY OF THE I.A.1813/2004 DATED 15.10.04.

EXT.P6 TRUE COPY OF THE JUDGMENT DATED 26.9.2005 IN W.P.(C)NO.27546/05.

EXT.P7 TRUE COPY OF THE ORDER DATED 17.10.2005 IN I.A.NO.1813/04.

EXT.P8 TRUE COPY OF THE I.A.2520/05 DATED 7.11.2005.

EXT.P9 TRUE COPY OF COUNSELLING REPORT DATED 27.3.2003.

RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF THE ORDER OF THIS COURT IN O.P.(H.C.) NO.21216/2002 DATED 5.8.2002.

EXT.R1(b) TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY S.H.HOSPITAL, PAYNKULAM, ON 26.6.2006.

EXT.R1(c) TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY S.H.HOSPITAL, PAYNKULAM ON 18.7.2006.

//TRUE COPY//

AHZ/

KURIAN JOSEPH & K.T. SANKARAN, JJ.

W.P.(C) NO. 16239 OF 2006 G

Dated this the 13th day of April,2007

JUDGMENT

Kurian Joseph, J.

The challenge is on Ext.P7 order passed by the Family Court, Kottayam. As per the said order, request of the petitioner, who is the husband of the respondent, to send the parties for further counselling was rejected. The marriage between the parties took place on 27.12.2001. There is a dispute as to whether the marriage has been consummated or not. Be that as it may, the main ground taken in the Original Petition filed before the Family Court by the respondent wife is that the marriage has not been consummated. When the case was posted before us, we had opportunity to talk to both parties and the respective counsel as well. As suggested at the time of hearing, the petitioner was also referred to an institute of sexual and marital health – Dr.Promodu's Institute of Sexual & Marital Health. The petitioner has not co-operated fully with the various tests suggested in the Institute. When the

case was taken up today, petitioner submitted before us that he was got examined at another centre - Vishranthi Centre, Kottayam and according to them, only with the presence of the respondent, a further treatment in the matter could be made. We are afraid, it may not be proper for this Court to permit the respondent, in the facts and circumstances of the case, to have further test or treatment for the purpose of this case. It is for the petitioner to undergo any counselling or any treatment and get appropriate certificate from the competent doctors to the effect that he is physically and emotionally fit to lead a married life, in which event, the Family Court will consider the matter in the light of such materials produced by him and take a decision as to whether any further counselling is necessary with the participation of the respondent. Till such time, it may not be just, proper and reasonable to compel the respondent to undergo any further counselling for the purpose of a decision in this case. Subject to the above liberty to the petitioner, this Writ Petition is dismissed.

Registry will keep a photocopy of the report of Dr.Promodu's Institute dated 11.4.2007 and letter of Vishranthi Centre dated 12.4.2007 for the purpose of reference and will forward both the report and the letter in original in a sealed cover to the Family Court, Kottayam along with a copy of this judgment immediately.

(KURIAN JOSEPH)
Judge

(K.T.SANKARAN)
Judge

ahz/